

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DUKE ENERGY OF OHIO, INC.,	:	APPEAL NO. C-160552
		TRIAL NO. A-1402465
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
MAURICE SHELTON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee Duke Energy of Ohio, Inc., sued defendant-appellant Maurice Shelton for breach of contract and tortious interference, seeking payment of an outstanding balance for utility services provided to two of Shelton's properties. Duke filed a motion for summary judgment, to which Shelton failed to respond. The trial court granted summary judgment to Duke Energy in the amount of \$18,223.88 plus interest. Shelton did not appeal that judgment and instead filed a motion for relief from judgment. The court denied his motion, and that decision was affirmed by this court on appeal.

A week after this court's affirmance, Shelton filed another motion for relief from judgment. In that motion, he asserted that he was entitled to relief pursuant to the "catchall" provision of Civ.R. 60(B)(5), claiming that Duke was being "unjustly enriched" by the decision of the trial court to grant Duke's motion for summary judgment. He claimed that the amount of the award was too high because Duke was negligent in failing to turn off the service in a timely manner. The trial court denied the motion, concluding that it was "not substantially different from Defendant's December 2015 motion," and thus "res judicata [barred] Defendant from relitigating the same issue repeatedly[.]"

In one assignment of error, Shelton claims that the trial court erred when it denied his motion for relief from judgment. “[R]es judicata prevents the successive filings of Civ.R. 60(B) motions [for] relief from a valid, final judgment when based upon the same facts and same grounds or based upon facts that could have been raised in the prior motion.” *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 8, quoting *Beck–Durell Creative Dept., Inc. v. Imaging Power, Inc.*, 10th Dist. App. No. 02AP–281, 2002-Ohio-5908, ¶ 16. Because Shelton’s subsequent Civ.R. 60(B) motion was based on facts that could have been raised in his first Civ.R. 60(B) motion, his second motion was barred by res judicata.

We overrule Shelton’s sole assignment of error, and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on May 31, 2017

per order of the court _____.

Presiding Judge